



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,068	02/13/2006	John Riordan	285135US2PCT	7460
22850	7590	07/22/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
KARIKARI, KWASI				
ART UNIT		PAPER NUMBER		
2617				
NOTIFICATION DATE		DELIVERY MODE		
07/22/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com

oblonpat@oblon.com

jgardner@oblon.com

Office Action Summary

Application No.

10/568,068

Applicant(s)

RIORDAN ET AL.

Examiner

KWASI KARIKARI

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2007 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-893)
Paper No(s)/Mail Date 02/13/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 02/13/2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant recites the claimed limitations, "the user" in claims 1 and 10, however, there are insufficient prior antecedent basis for these limitations in the claims.

For examination purposes, the examiner will treat the rejected claimed limitations in the broadest interpretation of the Applicant's specification. Appropriate corrections are required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4, 9-11, 13 and 18 are rejected under U.S.C. 102(e) as being anticipated by Husemann et al., (US 20040199056), (hereinafter Husemann).

Regarding claim 1, Husemann discloses a mobile communication device (= device 104 is configured to communicate with wireless unit 108, see 0028-29, 0035 and 0037) comprising,

a multiplicity of modes of operation with different operation functions, the mobile communication device encompassing sensors (= detection unit, see [0052-53]) and/or measuring devices for determining body-related parameters of the user (= e.g., patient 102, see [0029] and Fig. 1), and/or environmental parameters of the mobile communication device (= movement/acceleration, see [0053]) wherein

the mobile communication device comprises a selection module for evaluating the body-related parameters of the user and/or environmental parameters of the mobile communication device (=selected routine according to an input, see [0029, 0036-37 and 0047]) and

the mobile communication device comprises an operational mode module for adapting the respective mode of operation of the mobile communication device according to the evaluation data for the body-related parameters and/or environmental

parameters (= mode, see 0037, 0047 and 0053).

Regarding claim 2, as recited in claim 1, Husemann discloses the mobile communication device according to claim 1, wherein the mobile communication device comprises at least one sensor for measuring the cardiac rhythm and/or adrenaline level and/or oxygen content of the blood and/or blood sugar content and/or body position and/or brain activity and/or type of movement and/or direction of movement and/or vocal activity and/or pitch of the voice of the user as body-related parameters (see [0049, 0052-53 and 0055]).

Regarding claim 4, as recited in claim 1, Husemann discloses the mobile communication device, wherein the mobile communication device comprises a mobile radio device connectible to a communication network (see [0037 and 0039]).

Regarding claim 9, as recited in claim 1, Husemann discloses the mobile communication device, wherein the mobile communication device comprises at least one sensor able to be actuated by the user (see [0029 and 0053]).

Regarding claim 10, Husemann discloses a method for controlling different modes of operation of a mobile communication device (= device 104 is configured to communicate with wireless unit 108, see 0028-29, 0035 and 0037) different operational functions being controlled through the respective mode of operation of the mobile

communication device (= implementation of function in different modes, see [0036-37]) and body-related parameters of the user (= e.g., patient 102, see [0029] and Fig. 1) and/or environmental parameters (= movement/acceleration, see [0053]) of the mobile communication device being determined by means of sensors (= detection unit, see [0052-53]) of the mobile communication device, wherein the determined body-related parameters of the user and/or environmental parameters of the mobile communication device are evaluated by means of a selection module (=selected routine according to an input, see [0029, 0036-37 and 0047]) and an operational mode module adapts the respective mode of operation (= implementation of function in different modes, see [0036-37]) of the mobile communication device based on the evaluation data for the body-related parameters and/or for the environmental parameters (= mode, see 0037, 0047 and 0053).

Regarding claim 11, as recited in claim 10, Husemann discloses the method for controlling different modes of operation of a mobile communication device according to claim, wherein the heart rhythm and/or the blood pressure and/or the adrenaline level and/or the oxygen content of the blood and/or the blood sugar content and/or the body position and/or the brain activity and/or the type of movement and/or the direction of movement and/or the voice activity and/or the pitch of the voice of the user is measured as body-related parameters by means of at least one sensor of the mobile communication device (see [0049, 0052-53 and 0055]).

Art Unit: 2617

Regarding claim 13, as recited in claim 10, Husemann discloses the method for controlling different modes of operation of a mobile communication device, wherein used as the mobile communication device is a mobile radio device connectible to a communication network (see [0037 and 0039]).

Regarding claim 18, as recited in claim 10, Husemann discloses method for controlling different modes of operation of a mobile communication device, wherein at least one sensor is actuated by the user (see [0029, 0037 and 0053])

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 8, 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Husemann in view of Jacobsen et al., (US 6,198,394 B1), (hereinafter Jacobsen).

Regarding claim 3, as recited in claim 1, Husemann fails to disclose the mobile communication device, wherein the mobile communication device comprises at least one sensor for measuring the noise level and/or the air temperature and/or light values of the surrounding area of the communication device as environmental parameters.

However, Jacobsen, which is an analogous art, teaches a personnel monitoring system that include sensor unit to indicates cold weather and a body temperature (see col. 3, line 36- col. 4, line 8).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Jacobsen with the system of Husemann for the benefit of achieving a monitoring system which measures selected physiological variables and geolocation of a person and a monitoring system which is inexpensive and easy to operate (see Jacobsen; col. 2, lines 50-58).

Regarding claim 8, as recited in claim 1, Husemann fails to disclose the mobile communication device, wherein the selection module comprises "a predefinable threshold for triggering alarm functions by means of the mobile communication device for at least one body-related parameter and/or for at least one environmental parameter".

However, Jacobsen, which is an analogous art, teaches "a predefinable threshold for triggering alarm functions by means of the mobile communication device for at least one body-related parameter and/or for at least one environmental parameter" (= body temperature falls below a specified minimum, see col. 3, line 36- col. 4, line 8).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Jacobsen with the system of Husemann for the benefit of achieving a monitoring system which measures selected physiological variables and geolocation of a person and a monitoring system which is inexpensive and easy to operate (see Jacobsen; col. 2, lines 50-58).

Regarding claim 12, as recited in claim 10, Husemann fails to disclose the method for controlling different modes of operation of a mobile communication device, wherein the noise level and/or the "air temperature" and/or the light values of the surrounding area is measured as environmental parameter by means of at least one sensor the mobile communication device.

However, Jacobsen, which is an analogous art, teaches a personnel monitoring system that include sensor unit to indicates cold weather and a body temperature (see col. 3, line 36- col. 4, line 8).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Jacobsen with the system of Husemann for the benefit of achieving a monitoring system which measures selected physiological variables and

Art Unit: 2617

geolocation of a person and a monitoring system which is inexpensive and easy to operate (see Jacobsen; col. 2, lines 50-58).

Regarding claim 17, as recited in claim 10, Husemann fails to disclose the method for controlling different modes of operation of a mobile communication device, "wherein at least one threshold value is defined for one or more body-related parameters and/or for one or more environmental parameters, whereby "upon reaching the threshold value, an alarm function is triggered by means of the selection module".

However, Jacobsen, which is an analogous art, teaches "a predefinable threshold for triggering alarm functions by means of the mobile communication device for at least one body-related parameter and/or for at least one environmental parameter" (= body temperature falls below a specified minimum, see col. 3, line 36- col. 4, line 8).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Jacobsen with the system of Husemann for the benefit of achieving a monitoring system which measures selected physiological variables and geolocation of a person and a monitoring system which is inexpensive and easy to operate (see Jacobsen; col. 2, lines 50-58).

5. Claims 5-7 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Husemann in view of Njemanze (US 6,390,979 B1), (hereinafter Njemanze).

Regarding claim 5, as recited in claim 1, Husemann discloses the mobile communication device and communication network (=device 104 is configured to communicate with wireless unit 108 such as PDA and network 115, see 0028-29, 0035 and 0037); but fails to mention that the mobile communication device comprises "a play station".

However, Njemanze, which is an analogous art, teaches monitoring system uses a play station for individual physiological responses (see col. 2, lines 49-65 and col. 6, lines 16-40).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Njemanze with the system of Husemann for the benefit of achieving a monitoring system which includes a play station for monitoring individual physiological responses (see Njemanze; col. 6, lines 16-40).

Regarding claim 6, as recited in claim 1, Husemann discloses the mobile communication device, an expert module and means of which the selection of the mode of operation by the user (= device 104 is configured to communicate with wireless unit 108, and processing unit 119, see 0028-29 and 0036-37); but fails to mention "pattern recognition" in dependence upon the body-related parameters of the user and/or environmental parameters for the mobile communication device is trainable.

However, Njemanze, which is an analogous art, teaches neurocognitive strategies allowing pretest classification of subjects and prediction of expected results; and training (see col. 2, lines 49-65, col. 3, lines 28-42 and col. 5, lines 6-26).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Njemanze with the system of Husemann for the benefit of achieving a monitoring system which includes trained neural nets (see Njemanze; col. 3, lines 36-46).

Regarding claim 7, as recited in claim 6, Husemann fails to disclose "wherein the expert module comprises at least one neural network for pattern recognition.

However, Njemanze, which is an analogous art, teaches neurocognitive strategies allowing pretest classification of subjects and prediction of expected results; and training (see col. 2, lines 49-65, col. 3, lines 28-42 and col. 5, lines 6-26).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Njemanze with the system of Husemann for the benefit of achieving a monitoring system which includes trained neural nets (see Njemanze; col. 3, lines 36-46).

Regarding claim 14, as recited in claim 10, Husemann discloses the mobile communication device and communication network (=device 104 is configured to communicate with wireless unit 108 such as PDA and network 115, see 0028-29, 0035 and 0037); but fails to mention that the mobile communication device comprises "a play station".

However, Njemanze, which is an analogous art, teaches monitoring system uses a play station for individual physiological responses (see col. 2, lines 49-65 and col. 6, lines 16-40).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Njemanze with the system of Husemann for the benefit of achieving a monitoring system which includes a play station for monitoring individual physiological responses (see Njemanze; col. 6, lines 16-40).

Regarding claim 15, as recited in claim 10, Husemann discloses the mobile communication device, an expert module and means of which the selection of the mode of operation by the user (= device 104 is configured to communicate with wireless unit 108, and processing unit 119, see 0028-29 and 0036-37); but fails to mention "wherein an expert module is trained by means of pattern recognition based on the selection of the mode of operation by the user in dependence upon the body-related parameters of the user and/or environmental parameters of the mobile communication device, and is used for control of the selection of s the modes of operation".

However, Njemanze, which is an analogous art, teaches neurocognitive strategies allowing pretest classification of subjects and prediction of expected results; and training (see col. 2, lines 49-65, col. 3, lines 28-42 and col. 5, lines 6-26).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Njemanze with the system of Husemann for the benefit of

Art Unit: 2617

achieving a monitoring system which includes trained neural nets (see Njemanze; col. 3, lines 36-46).

Regarding claim 16, as recited in claim 10, Husemann fails to disclose "wherein the expert module trains the pattern recognition using at least one neural network".

However, Njemanze, which is an analogous art, teaches neurocognitive strategies allowing pretest classification of subjects and prediction of expected results; and training (see col. 2, lines 49-65, col. 3, lines 28-42 and col. 5, lines 6-26).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Njemanze with the system of Husemann for the benefit of achieving a monitoring system which includes trained neural nets (see Njemanze; col. 3, lines 36-46).

CONCLUSION

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached form PTO-892 for cited references and the prior art made of record.

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully

Art Unit: 2617

consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. SEE MPEP 2141.02 [R-5] VI. PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS: A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). >See also MPEP §2123.

Art Unit: 2617

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kwasi Karikari whose telephone number is 571-272-8566. The examiner can normally be reached on M-T (9am - 7pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on 571-272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8566. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kwasi Karikari/
Patent Examiner
Art Unit 2617.

/Charles N. Appiah/
Supervisory Patent Examiner, Art Unit 2617